

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:22-cv-179

MERLY GARCIA CHAMPAGNE,)
)
Plaintiff,)
)
v.)
)
COFM OPCO LLC d/b/a COOKS)
FLEA MARKET,)
)
Defendant.)

**NOTICE OF REMOVAL TO
FEDERAL COURT**

Defendant COFM Opco LLC (“COFM” or “Defendant”), by and through undersigned counsel, respectfully removes the above-entitled action from the Superior Court of Forsyth County, North Carolina, to the United States District Court for the Middle District of North Carolina, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446(b)(3). In support of this Notice of Removal, Defendant states as follows:

1. This action is being removed to federal court based on diversity of citizenship between the parties and, on information and belief, an amount in controversy greater than \$75,000.00.

2. On December 7, 2021, Plaintiff filed a Complaint in the Superior Court of Forsyth County, North Carolina, styled “Merly Garcia Champagne v. COFM Opco LLC d/b/a Cooks Flea Market and Hooks-CJ, Inc. formerly known as Cooks Flea Market, Inc.” That case was assigned civil action

number 21 CVS 6036 (“Superior Court action”). On February 8, 2022, Plaintiff served her voluntary dismissal of defendant Hooks-CJ, Inc. from this action. This notice is being filed within thirty (30) days of Plaintiff’s voluntary dismissal of Hooks-CJ, Inc.

3. Plaintiff’s claims for relief against Defendant in the Superior Court action are for ordinary and gross negligence and negligence *per se*.

4. The United States District Court for the Middle District of North Carolina has original jurisdiction over the Superior Court action pursuant to 28 U.S.C. §1332(a) and it may be removed by Defendant pursuant to 28 U.S.C. §1441(a) and (b) and §1446(b)(3) for the following reasons:

- a) Per the Plaintiff’s Complaint, she is a resident of the State of North Carolina.
- b) Defendant is a limited liability company duly organized under the laws of the State of Delaware with its principal place of business in the State of Colorado.
- c) Hooks-CJ, Inc. is, or was, a corporation organized and existing under the laws of the State of North Carolina.
- d) The inclusion of Hooks-CJ, Inc. in the original lawsuit meant that there was not complete diversity of citizenship between the parties in this action.
- e) Plaintiff’s dismissal of Hooks-CJ, Inc. means that there is now complete diversity of citizenship between the parties in this action.
- f) Plaintiff dismissed Hooks-CJ, Inc. from this action less than 30 days ago.

- g) The matter in controversy between Plaintiff and Defendant is, at the time of this removal, one in which complete diversity of citizenship exists.
- h) On information and belief, the amount in controversy between the Plaintiff and Defendant in this action, exclusive of interest and costs, exceeds \$75,000.00 based on the allegations in Plaintiff's Complaint, including her claim seeking recovery of punitive damages.
- i) Therefore, Defendant files this notice of removal of this action from Forsyth County Superior Court to the United States District Court for the Middle District of North Carolina.

5. Attached to this notice as **Exhibit 1** are copies of the Summons and Complaint filed in the Superior Court action.

6. Attached to this notice as **Exhibit 2** is a copy of the Answer filed in the Superior Court action.

7. Attached to this notice as **Exhibit 3** is a copy of the Voluntary Dismissal without Prejudice as to the Defendant Hooks-CJ, Inc. filed in the Superior Court action.

8. Attached to this notice as **Exhibit 4** is a copy of Plaintiff's Response to the Defendants' Plea of Contributory Negligence filed in the Superior Court action.

9. A copy of this Notice of Removal is being served on the Clerk of Court of County, North Carolina contemporaneously with the filing of this Notice of Removal, as shown by the notice attached as **Exhibit 5**.

WHEREFORE, Defendant respectfully requests that this action be removed from the Superior Court of Forsyth County, North Carolina, to the United States District Court for the Middle District of North Carolina.

This the 7th day of March 2022.

/s/ F. Marshall Wall
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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of March 2022, I electronically filed the *Notice of Removal to Federal Court* with the Clerk of Court using the CM/ECF system and mailed the document via the United States Postal Service, postage pre-paid and addressed to:

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Attorney for Plaintiff

/s/ F. Marshall Wall
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